IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 23935 of 2006(Y)

PETITIONER:

UNATHIL SAROJINI, AGED 66 YEARS,
W/O.THECKIL DAMODARAN, NEAR MARKET,
P.O.KUNHIMANGALAM, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, KANNUR.

2. THE TAHSILDAR, KANNUR.

3. THE VILLAGE OFFICER, KUNHIMANGALAM.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE DEMAND NOTICE DT.27.10.2005.

P2: TRUE COPY OF DEMAND NOTICE ISSUED BY R2 DT.26.11.2005.

P3: TRUE COPY OF ORDER DT.26.11.2005 ISSUED BY R2.

P4: TRUE COPY OF REVISION PETITION FILED BY PETITIONER BEFORE R1 DT.12.4.06..

P4A: TRUE COPY OF DELAY CONDONATION AFFIDAVIT DT.12.4.06.

P5: TRUE COPY OF POSTAL ACKNOWLEDGEMENT RECEIPT OF EXT.P4.

P6: TRUE COPY OF APPEAL FILED BEFORE THE R.D.O., THALASSERY, DT.21.9.06.

P7: TRUE COPY OF AFFIDAVIT FILED IN SUPPORT OF PETITION TO CONDONE DELAY IN FILING THE APPEAL DT.23.9.06.

P7(a): TRUE COPY OF POSTAL RECEIPT GIVEN BY THE POST OFFICE, PAYYANUR DT.23.9.06.

P6(IN IA. 16706/2006): TRUE COPY OF ORDER OF THE R.D.O., THALASSERY DT.27.9.06.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.23935 of 2006

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Dated this the 9th day of August, 2007.

JUDGMENT

The petitioner is challenging demand of luxury tax on the ground that construction of building was completed before 1.4.1999, the date on which luxury tax came into force. The petitioner has relied on Ext.P1 which is issued by the local authority which itself is not in the name of the petitioner. The dispute arose because Tahsildar has not considered petitioner's objections and the order is issued in the prescribed form. Date of completion of construction of the building can be established with several documents and facts. In the first place, petitioner can produce the first electricity bill after domestic connections was granted and it is for the Tahsildar to recheck the correctness of the same with KSEB. Similarly if there is water connection, the same will go to indicate date of completion of construction. Even evidence on date of house-warming ceremony will throw some light on date of completion of construction. Besides all these, details of cost incurred for the construction also will be relevant. Since local authority accepts tax and issue completion certificate for applying for electricity connection, water connection etc., the same cannot be relied on

as conclusive evidence about date of completion of construction of building. The petitioner is directed to produce all the details before the second respondent pertaining to date of completion of construction of building or about the building purchased by the petitioner. Second respondent will go through the documents and determine the date of completion of construction of the building and if it is completed on or after 1.4.1999, he will demand luxury tax or otherwise, demand will be recalled. The W.P. is therefore disposed of directing the second respondent to complete fresh adjudication and pass orders supported by reasons, within a period of three months from today. The petitioner will produce copy of this judgment for compliance. The interim order granted by this court will continue for three months and thereafter recovery will be based on fresh adjudication order to be issued by the Tahsildar.

C.N.RAMACHANDRAN NAIR
Judge

pms